

Court: YouTube channel not considered media under records law

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OLYMPIA, Wash. (AP) — A Washington man with a YouTube channel does not qualify as a member of the media under the state's public records law, meaning he is not entitled to certain records that are available to news organizations but otherwise exempt from release to the general public, the state Supreme Court ruled Thursday.

In a 7-2 opinion, which overrules part of a Thurston County Superior Court ruling that found otherwise, the high court said that the statutory definition of "news media" requires an entity "to have a legal identity separate from the individual."

The ruling comes in the case of Brian Green, who runs the "Libertys Champion" YouTube channel and sought photographs and birth date information from the Pierce County personnel files of jail staff and law enforcement employees. Such information is exempt from release to the public under current law, but an exception to the exemption exists for members of the news media.

Green had filed a public records request in 2017 seeking information on deputy and jail personnel related to a 2014 incident in which he was arrested at the County-City Building in Tacoma, where Green and another man went to pay a parking ticket but refused to let security search a bag, according to court records. Green was released the next day and a charge of criminal obstruction was dismissed.

In his public records request, Green signed the email with the title "Investigative Journalist" and his YouTube page cites a focus on exposing corruption. While the Pierce County Sheriff's Department did provide Green with 11 pages of records, it did not include the personnel information, noting the information was exempt. Green sued, saying that he and his YouTube channel met the statutory definition of "news media" because he gathers and reports news.

The trial court found that the statutory definition of "news media" does not require financial profit or a corporate structure, noted that the channel published videos every week, and found that the channel met the definition of a news organization. The Supreme Court upheld a portion of the lower court ruling that denied Pierce County's motion for additional material on the YouTube channel's organizational structure.

In overturning the crux of the lower court ruling, Supreme Court Justice Raquel Montoya-Lewis wrote that the YouTube channel fails the first part of a two-step analysis to determine whether a group falls under one of the listed traditional news outlets listed or the general term "entity" as defined in current state statutes.

The statute, enacted in 2007 by the Legislature for purposes of defining who is covered by a law protecting journalists from facing prison for not revealing confidential sources, includes newspapers, wire services, radio and television, as well as “any entity that is in the regular business of news gathering and disseminating news or information to the public by any means” as well as those who are employed by the entities listed.

Montoya-Lewis noted that the word “entity” followed a list of traditional news outlets and said that while traditional news organizations also create and run their own YouTube channels, “owning and operating a YouTube channel alone does not create a news media entity.”

“The manner in which we access news today is vastly different from how we did it in 2007, and this statutory definition may not comport with the current intersection of social media and the news,” Montoya-Lewis wrote. “However, the legislature, not the court, is responsible for enacting statutes, and this court is bound by the statute’s unambiguous language.”

The court’s dissent, written by Justice G. Helen Whitener, argued that nothing in state statutes requires a news organization to be a commercial business. Whitener wrote that under her reading of the current law, Green’s YouTube channel “cannot be precluded from counting as news media simply because it lacks a separate legal identity from Green.”

“From the perspective of the First Amendment, distinguishing different news media based on size or organizational structure or status as a legal entity is disfavored, if not outright impermissible,” she wrote.

Joseph Thomas, Green’s attorney, agreed with the dissenting justices concerns about First Amendment issues.

“As the United States Supreme Court has recognized, the freedom of the press is a fundamental personal right which in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion,” he said.

Email and phone messages left with an attorney for Pierce County were not immediately returned. The case now heads back to the lower court, with instructions from the Supreme Court to dismiss Green’s complaint.